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OFFICE OF PETITIONS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re PATENT application of - Believed to be	)	
Nate Mullen and/or Randy Weisser and possibly	)	
assigned to Unique Lighting, Inc.	)	Art Unit: UNKNOWN
Serial No.: UNKNOWN	)	Examiner: UNKNOWN
Filed: UNKNOWN	)	Date: UNKNOWN
For: UNKNOWN	)	

PETITION FOR ACCESS AND STATUS TO AN APPLICATION

UNDER 37 CODE OF FEDERAL REGULATIONS SECTION 1.14(j)

07/03/2001 LGIBBS 00000007 NATE MULLEN

01-FC:122 130.00 OP

The Honorable Director of Patents and Trademarks

Washington, D.C. 20231

Sir:

It is requested that Petitioner and his designated attorney, James H. Fritz, Registration No. 28,077, be granted access to and allowed to inspect the contents of the file record that is believed to be the currently pending patent application of Nate Mullen and/or Randy Weisser, which application may have been assigned to Unique Lighting, Inc. It is further requested that Petitioner be informed of the status of said application.

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1 This petition is made pursuant to 37 Code of Federal Regulations Section 1.14(j), which  
2 provides:

3 “(j) *Access of copies in other circumstances.* The Office, either *sua sponte* or  
4 on petition, may also provide access or copies of all or part of an application if  
5 necessary to carry out an Act of Congress or if warranted by other special  
6 circumstances. Any petition by a member of the public seeking access to, or  
copies of, all or part of any pending or abandoned application preserved in  
confidence pursuant to paragraph (a) of this section, or any related papers, must  
include:

- 7 (1) The fee set forth in § 1.17(h); and  
8 (2) A showing that access to the application is necessary to carry out an Act of  
Congress or that special circumstances exist which warrant petitioner being granted  
access to all or part of the application.

9 In this instance, special circumstances as described and established by the attached  
10 declaration of Stanley K. Shibata exist warranting that Petitioner be granted access to the  
11 pending application in that patent applicant has threatened and apparently intends to immediately  
12 interfere with the business of Petitioner.

13 In *ex parte Bonnie-B Company* 1923 C.D. 42, 313 O.G. 453 (1922), a petition for access  
14 to a pending application was made. It was held that access would be granted if the inventor of a  
15 pending application interferes with the business of his threatened competitor.

16 This holding was affirmed in *In Re Trimless Cabinets*, 128 USPQ 95 (1960), which held  
17 that access would be granted to a pending application if a petition was accompanied by proof that  
18 the petitioner or its customers were being threatened and that the Petitioner’s business has  
19 suffered because of the threats.

20 In *Re Crossman*, 187 USPQ 367 (1975) further held that the use of an application to  
21 interfere with the business of another may be considered as 35 US Code Section 122 Special  
22 Circumstances under which information may be released without consent of the owner of the  
23 application.

24 As the declaration of Stanley K. Shibata establishes, he received, in his capacity as  
25 president of Focus Industries, Inc.(erroneously designated as Focus Landscape Lighting), the  
26 letter of May 2, 2001, Exhibit A, from counsel for Unique Lighting, Inc. Focus Industries, Inc.  
27 manufactures and distributes landscape lighting systems for residential and commercial  
28 applications. Unique Lighting, Inc. is a competitor of Focus Industries, Inc.. According to

1 Exhibit A, Unique Lighting, Inc. claims to be the originator of the "Equalizer Hub" for use in  
2 lighting systems, primarily landscape lighting systems. It is claimed that there is "presently a  
3 patent pending on the Equalizer Hub and the wiring method embodied in the Equalizer Hub."

4 Unique Lighting further claims that Focus is presently offering lighting fixtures which are  
5 "hub ready" and that Focus is providing technical literature on using "the hub" wiring method,  
6 which constitute unauthorized and unlicensed acts in violation of the rights of Unique Lighting,  
7 Inc. It is demanded that Focus immediately cease and desist all of the above-mentioned activity.

8 As the declaration of Mr. Shibata establishes, Focus Industries, Inc. is not offering "hub  
9 ready" lighting fixtures, nor is it providing technical literature on using "the hub" wiring method.  
10 Mr. Shibata is unaware of the "invention" claimed by Unique Lighting or the scope of the claims,  
11 yet it is demanded that he immediately cease and desist from certain actions with the implied  
12 threat that a lawsuit will follow if he does not comply.

13 Focus Industries, Inc. is placed in the untenable position of being threatened with  
14 litigation if it does not cease and desist from performing certain unspecified acts which have an  
15 undefined scope. The letter states that these undefined and unspecified acts infringe a pending  
16 patent application of Unique Lighting.

17 Without knowing the scope of the potential claims of Unique Lighting, Focus cannot  
18 evaluate the reasonableness of the claim and cannot meaningfully respond to Exhibit A, the letter  
19 of May 2, 2001. Focus cannot determine which of its lighting fixtures potentially infringe on the  
20 pending patent application of Unique Lighting and which do not. In view of the threat in the  
21 letter of May 2, the safest course of action for Focus is to stop manufacturing and distributing all  
22 lighting fixtures, a course of conduct which would rapidly put Focus out of business.

23 For these reasons, it is requested that Focus Industries, Inc. and its designated attorney,  
24 James H. Fritz, be granted access to the pending patent application of Nate Mullen and/or Randy  
25 Weisser which may have been assigned to Unique Lighting, Inc. Access will allow the  
26 specifications and claims to be reviewed to determine whether or not the threatened action of  
27 Unique Lighting is meritorious and whether or not any of the current products of Focus  
28 Industries, Inc. potentially infringe the pending patent application. This review will allow Focus

1 Industries, Inc. to continue to conduct business in a manner which is free from the threat of  
2 potential infringement of the pending patent application of Unique Lighting.

3 The fee for this petition required by 37 CFR Section 1.14 and as set forth in 37 CFR  
4 Section 1.17(h), \$130.00, is attached.

5 The declaration of Stanley K. Shibata and Exhibit A, the letter of May 2, 2001, are  
6 attached.

7 A duplicate copy of this Petition and attachments has been served by mail on the office of  
8 patent applicant's counsel Yanny & Smith; see attached proof of service and certificate of  
9 mailing under 37 CFR 1.8.


10 DATED: June 22, 2001

Respectfully submitted,

11  
12 By   
13 James H. Fritz, Registration No. 28,077  
SIMS LAW FIRM  
14 950 South Coast Drive, Suite 200  
Costa Mesa, CA 92626  
15 (714) 428-0321  
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I declare under penalty of perjury pursuant to the laws of the State of California that the above-stated facts are true and correct and that this declaration was executed on June 11, 2001 at Lake Forest, California.

  
Stanley K. Shibata

**YANNY & SMITH**

A LAW CORPORATION

1925 CENTURY PARK EAST

SUITE 1260

LOS ANGELES, CALIFORNIA 90067

PHONE: (310) 551-2966

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JOSEPH A. YANNY, P.C.\*<sup>AA</sup>

PATRICK K. SMITH\*<sup>AA</sup>

SEAN T. OSBORN

MICHAEL A. DiNARDI\*<sup>AA</sup>

MICHAEL P. MARTIN

REGINALD K. BROWN\*

BARRY VAN SICKLE\*

MAY 2, 2001

OUR FILE NO.: L3847

\*ALSO ADMITTED IN ILLINOIS

\*ALSO ADMITTED IN OHIO

\*NOT ADMITTED IN CALIFORNIA/ADMITTED

IN VIRGINIA

<sup>AA</sup> REGISTERED PATENT ATTORNEY

AND COUNSEL

**Via U.S. Mail**

Mr. Stan Shibata

FOCUS Landscape Lighting

25391 Arctic Ocean Dr.

Lake Forest, CA 92630

**Re: The Hub Connection**

Dear Mr. Shibata:

We represent Unique Lighting, Inc., the originators of the Equalizer Hub for use in lighting systems, primarily landscape lighting systems. The methods and structures used in connection with the Equalizer Hub are proprietary to Unique Lighting. There is presently a patent pending on the Equalizer Hub and the wiring method embodied in the equalizer hub. All of this property encompasses intellectual property that is owned solely by Unique Lighting.

We have learned that you are presently offering lighting fixtures which are "Hub Ready." We have also learned that you are providing technical literature on using "The Hub" wiring method. These unauthorized and unlicensed acts constitute violations of our client's rights. By this letter, we demand that you immediately cease and desist all of the above-mentioned activity.

If you wish to discuss this matter, you or your representative can contact our office. Be advised that our client will pursue all remedies available to it. In all future correspondence regarding this matter, please refer to the above-referenced file number.

Very truly yours,

  
Joseph A. Yanny

cc: Nate Mullen and Randy Weisser

md:\g&y\corr\unique\B3847\050201.focus.jay.ltr

**EXHIBIT A**

**Certificate of Mailing under 37 CFR 1.8**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

**Assistant Commissioner for Patents  
Washington, D.C. 20231**

Joseph A. Yanny

YANNY & SMITH

1925 Century Park East, Suite 1260

Los Angeles, CA 90067

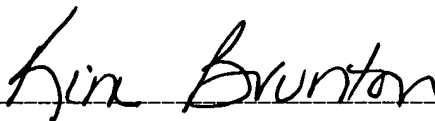
on 6-22-01

Date

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JUL 2 2001

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Signature

Kim Brunton

Typed or printed name of person of signing Certificate

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.



**PROOF OF SERVICE BY MAIL**  
(Code Civ. Proc. §1013a(3), 2015.5 C.C.P.)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 950 South Coast Drive, Suite 200, Costa Mesa, California 92626.

On June 22, 2001, I served the foregoing documents on the interested parties in this action:

**PETITION FOR ACCESS AND STATUS TO AN APPLICATION  
UNDER 37 CODE OF FEDERAL REGULATIONS SECTION 1.14(j)**

☒ by placing the true copies thereof enclosed in sealed envelopes addressed as listed below:

See Service List Attached

☒ **BY MAIL:** I deposited such envelope in the mail at Costa Mesa, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, said correspondence is deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Costa Mesa, California in the ordinary course of business; and there is delivery service by United States mail at the place so addressed.

I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. Executed on June 22, 2001, at Costa Mesa, California.

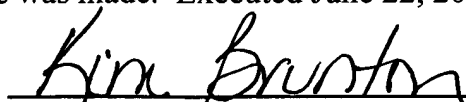
☐ **BY PERSONAL SERVICE:** I delivered such envelope by hand to counsel listed on the attached personal service list. Executed on June 22, 2001, at Costa Mesa, California.

☐ **BY FACSIMILE TRANSMISSION:** See attached Proof of Transmission by Fax. The telephone number on the facsimile machine I used is (714) 428-0345. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2009, I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☐ **(Federal Express):** I caused such envelope(s) to be delivered by air courier, with next day service.

☐ **(State):** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 22, 2001 at Costa Mesa, California.

☒ **(Federal):** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. Executed June 22, 2001 at Costa Mesa, California.

  
Kim Brunton



**SERVICE LIST**

Box DAC  
Assistant Commissioner for Patents  
Crystal Park One, Suite 520  
Washington, D.C. 20231

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